

Office of Chief Counsel
Internal Revenue Service

memorandum

CC:NER:PEN:PHI:TL-N-6558-99
JRCattell

date: **DEC 6 1999**

to: Chief, Examination Division, Pennsylvania District
Attention: Carl Stewart, Case Manager
Attention: Kathleen Follis, Team Coordinator, Comcast Corporation

from: Assistant District Counsel, Pennsylvania District, Philadelphia

subject: [REDACTED] - Consent to Extend
the Statutory Period of Assessment for the tax period ending
December 31, [REDACTED]

We have incorporated additions from our National Office, to the document sent to you on November 19, 1999. This is a superseding complete document.

DISCLOSURE STATEMENT

This advice constitutes return information subject to I.R.C. § 6103. This advice contains confidential information subject to attorney-client and deliberative process privileges and if prepared in contemplation of litigation, subject to the attorney work product privilege. Accordingly, the Examination or Appeals recipient of this document may provide it only to those persons whose official tax administration duties with respect to this case require such disclosure. In no event may this document be provided to Examination, Appeals, or other persons beyond those specifically indicated in this statement. This advice may not be disclosed to taxpayers or their representatives.

This advice is not binding on Examination or Appeals and is not a final case determination. Such advice is advisory and does not resolve Service position on an issue or provide the basis for closing a case. The determination of the Service in the case is to be made through the exercise of the independent judgment of the office with jurisdiction over the case.

You have requested our advice regarding proposed language for a Form 872, extending the statute of limitations with respect to TEFRA partnership items. We understand the facts to be as follows:

[REDACTED] has a [REDACTED] % owned subsidiary called [REDACTED]. [REDACTED] is a partner in [REDACTED]. TEFRA unified partnership proceedings apply to any partnership required to file a return under I.R.C. § 6031(a) and which does not fall within the small partnership exception. See § 6231(a). Under I.R.C. § 6231(a)(1)(B), a small partnership is one in which there are 10 or fewer partners, each of whom is a natural person or an estate. [REDACTED] is also a TEFRA entity because it has corporate partners.

[REDACTED] is a limited partnership in which two [REDACTED] subsidiaries hold interests. These two subsidiaries are [REDACTED], and [REDACTED]. Each of these corporate partners are included in the consolidated filing of [REDACTED]. You also wish to extend the statute of limitations for partnership adjustments with respect to [REDACTED].

It is of course assumed for purposes of this response that: (1) [REDACTED] was the common parent of the consolidated group for the group's [REDACTED] tax year; (2) [REDACTED], [REDACTED], and [REDACTED], were members of the [REDACTED] consolidated group during the group's [REDACTED] tax year; and (3) the TEFRA partnership items (including converted items) at issue flow through to the consolidated group's [REDACTED] income tax year. Do not rely on this advice if any of these assumptions is incorrect.

We do not have a stamped copy of the [REDACTED] return for [REDACTED] filed with the Service Center. According to the taxpayer's transcript, the statutory period of assessment for the tax period ending [REDACTED] will expire on [REDACTED]. The copy of the [REDACTED] return provided by the taxpayer has a date stamp on the front page of [REDACTED], making the statutory period of assessment expiration date [REDACTED]. We are advising you to have any statute extensions executed by all parties before [REDACTED].

The second part of your request is that language be included in the Form 872 solicited to extend the statutory period of assessment to include any partnership adjustments to [REDACTED], and any accepted items flowing from those adjustments. Our National office has recently revised the language to be incorporated into a corporate Form 872 to accomplish this goal. After paragraph (2) of the Form, you should add the following language:

"With regard to interests held in entities that are subject to

the TEFRA unified audit and litigation procedures, and without otherwise limiting the applicability of this agreement, this agreement also extends the period of limitations for assessing any tax (including additions to tax and interest) attributable to any partnership items, affected items, computational adjustments, and partnership items converted to nonpartnership items. This agreement extends the period for filing a request for administrative adjustment and the period for filing a petition regarding such a request. For partnership items that have converted to nonpartnership items, this agreement extends the period for filing a suit for refund or credit. In accordance with paragraph (1) above, an assessment attributable to a partnership shall not terminate this agreement for other partnerships or for items not attributable to a partnership. Similarly, an assessment not attributable to a partnership shall not terminate this agreement for items attributable to a partnership."

If the taxpayer wants to limit the language of this paragraph to apply only to adjustments arising from the partnership [REDACTED] and [REDACTED], the phrase "with respect to the partnerships [REDACTED] and [REDACTED]." should be added at the end of the first sentence of the paragraph, after the words "converted to nonpartnership items". Our National Office has two alternate recommendations as to where to place the additional language to accomplish the desired result. The first is to add the suggested phrase to the first part of the first sentence in place of "entities." The second suggestion is to place the phrase "the entities listed below" in the place of "entities" and to list the entities to which the extension will apply.

Where a partner is a subsidiary in a consolidated filing group, Treas. Reg. § 1.1502-77(a) provides that the common parent, for all purposes (other than executing certain consents or elections not relevant here) is an "agent" for each subsidiary in the consolidated income group, duly authorized to act in its own name in all matters relating to the tax liability of the consolidated return year. Therefore, [REDACTED] is the proper party to execute a Form 872 to extend the statute of limitations with regard to the TEFRA partnership items arising from [REDACTED] and [REDACTED].

[REDACTED] should be identified as the taxpayer on the first page of the Form 872 as follows:

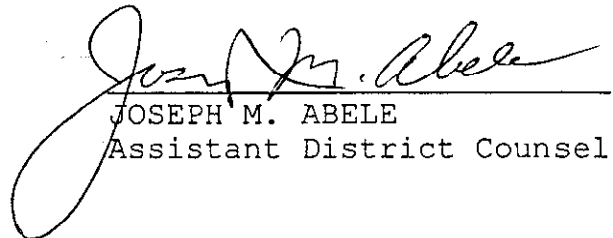
(name of subsidiary corporation), partner of
(name of TEFRA partnership) and member of
[REDACTED] consolidated

group.

The signature block, located on the second page of the Form 872, should read as follows:

██████████ by (name of authorized officer, title), common parent, on behalf of (name of subsidiary corporation), partner of (name of TEFRA partnership).

If you have any questions, please call Attorney Joellyn R. Cattell of our office at (215) 597-3442. We are forwarding a copy of this advice to the Assistant Regional Counsel (Tax Litigation) (CC:NER).


JOSEPH M. ABELE
Assistant District Counsel

cc: Assistant Regional Counsel (Tax Litigation) (CC:NER)